IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2564 OF 2005

Rudra Gawda and anr. ... Petitioner

Vs.

Vidyanidhi Education Trust and Ors... Respondents

Ms. B. D'souza i/by M.P. Vashi & Associates for Petitioner.

Mr. A.K. Moily for R. Nos. 1 and 2.

Ms. Mugdha Jadhav, A.G.P. for R. No. 3.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: OCTOBER 12, 2006

P.C.:

. Rule. Heard forthwith.

. The grievance of the Petitioners is that they were appointed against regular vacancies which were approved by Respondent No. 3. The Petitioners have qualifications of B.A. & B.Ed. The Respondent No. 2 is a school run by a linguistic minority. It is not necessary to go into various other aspects, suffice it to say that the Petitioners were appointed as Assistant Teachers, for the period of 1999-2000. For the next academic year, the Petitioners were appointed as Shikshan Sevaks. However, the appointment as Shikshan Sevaks was rejected on the ground that the Management has not produced the certificate showing that the school is

a minority school. Aggrieved by the communication of the Respondent State, Petitioners preferred an appeal before One Member Grievance Committee which upheld the contention pursuant to which Petitioners were treated as Shikshan Sevaks from 13.6.2000 to 12.6.2003 by letter dated 1.12.2004. The Respondent Management produced certificate showing that they are a minority institute only on 20.5.2003.

. The case of the Petitioner is that once she was regularly appointed and the appointment was against a regular vacancy and was approved and the post continued, the Management could not have appointed the Petitioners as Shikshan Sevaks, as they were already appointed as Assistant Teachers. The Respondent state has taken a stand that the Management had to follow the roster or produce certificate showing that the school is either a religious or linguistic minority school. If it is a minority religious or linguistic the roster would not apply. In this case, the Management produced certificate on 20.5.2003. This certificate in terms of the judgment of the Apex Court in N. Ammad Manager, Emjay High Schools and Others (1998) 6 S.C.C. 674 is a declaration of the legal characters of the institution. Being therefore a minority school, the roster of reservation would not apply.

. The other aspect of the matter is the contention of the Respondents state that the Petitioners had gone to the Grievance committee. The mere submission to grievance committee would not affect the legal rights of the Petitioner if otherwise the committee has no jurisdiction. In the instant case, as the Petitioners were initially appointed as Assistant Teachers, they were requierd to be continued as such.

. In the light of that, Petition will have to be allowed and consequently rule made absolute in terms of Prayer Clauses (a) and (b) considering that the Petitioner had to be appointed as Assistant Teachers from the first date of their appointment. In the circumstances of the case, there shall be no order as to costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**